REMARKS

Claims 1 – 3 and 5 – 30 remain in the application and stand rejected. Claims 1, 3, 6, 14, 20 – 23, 25 and 27 – 30 are amended herein. No new matter is added. Claim 4 is canceled herein. Although this Response is being timely filed, the Commissioner is hereby authorized to charge any additional fees that may be required for this paper or credit any overpayment to Deposit Account No. 50-3818.

The "examiner should always look for enabled, allowable subject matter and communicate to applicant what that subject matter is at the earliest point possible in the prosecution of the application." MPEP 2164.04, last paragraph (emphasis original).

Claims 1, 3, 4 and 6 – 8 are rejected under 35 U.S.C. §102(e) as being unpatentable over published U.S. Patent application No. 2002/0126699 to Cloonan et al. Claims 2, 11 – 13, 18, 19, 22, 24 – 27 and 29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. in combination with published U.S. Patent application No. 2008/0031439 to Synnestvedt et al. Claims 9 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. in combination with published U.S. Patent application No. 2002/0122387 to Ni and U.S. Patent No. 6,978,144 to Choksi. Claims 5, 14 – 17, 23, 28 and 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. and Synnestvedt et al. in further combination with Choksi. The rejection is respectfully traversed, at least in part.

Regarding the rejection of claims 3 and 4, the Office action asserts that in Cloonan et al. "the determination is periodic and executed by a central server (item 302)." Applicants note that claim 3 no longer just recites that the determination is periodic; and Cloonan et al. item 302 is, more or less, a modem, not a server.

Claim 3 recites that "system traffic determination comprises periodically **sending router load requests to routers** and measuring system traffic responsive to router traffic loads and providing said system traffic measurement responsive to receiving said service request." Lines 2 – 4 (emphasis added).

Cloonan et al. teaches "a traffic congestion control solution for use on **upstream channels** coming **into a CMTS** using QoS parameters in a connection admission control system." Paragraph 0015 (emphasis added). Or, Cloonan et al. teaches "a method of controlling **traffic** loading **on a cable modem termination system** (CMTS) having a plurality of basic upstream data service flow scheduling types for a cable data system … ." Paragraph 0016 (emphasis added). A typical cable modem (CM) "is similar to the Cable Modem Termination System (CMTS) equipment required at the cable company's headquarters, except for the **greater size** required at the headquarters." Paragraph 0004 (emphasis added). "The CMTS 302 has a plurality of channels (links) 304 which **connect the CMTS 302 to** a plurality of subscriber **cable modems of 'CMs' 306**." Paragraph 0054 (emphasis added). So, Cloonan et al. teaches managing upstream traffic between a number of cable modems (CMs) connected to a larger cable modem (CMTS 302). This is not what claim 3 recites. Therefore, Cloonan et al. fails to teach the present invention as recited in claim 3.

With regard to claim 4 (and 14), the above description of the CMTS as a modem (i.e., a modulator demodulator), is different than the typical definition of a server, i.e., "6 : a computer in a network that is used to provide services (as access to files or shared peripherals or the routing of e-mail) to other computers in the network." http://www.merriam-webster.com/dictionary/server. Therefore, Cloonan et al. fails to teach the present invention as recited in claim 4.

Claims 1 and 20 are amended to recite that the determination is on a server. Therefore, Cloonan et al. fails to teach the present invention as recited in claim 1 (or 20 or any claim depending therefrom. Reconsideration and withdrawal of the rejection of claims 1, 3 and 6 – 8 under 35 U.S.C. §102(e) is respectfully requested.

Further, claims 1, 20, 25 and 29 are amended to recite that the endpoints communicate with the server/apparatus and each other through routers. This is supported by claim 3 and the specification. For example, the system may "include a plurality of end points connected via a network of routers. The routers transfer messages from a service requesting end point to a destination end point." Page 2, lines 14 – 16. "End point 120A generates a service request

message 405 requesting a specific type of service from a service provider. The request message 405 is transmitted to router 100_O, which recognizes the message 405 as an initial service request and transmits it to central server 100 in step 410." Claims 3, 6, 14, 21 – 23, 27, 28 and 30 are amended responsive to the amendment to claims 1, 20, 25 and 29. No new matter is added and this is not shown by Cloonan et al.

Moreover, modifying the Cloonan et al. system or method of managing upstream traffic between a number of cable modems (CMs) connected to a larger cable modem (CMTS 302) to result in the present invention as recited in claim 1, as amended ("receiving a service request from an end point, said end point being one of a plurality of communications endpoints on a communications system, said plurality of endpoints being connected to each other through a network of routers, each said service requests passing through at least one of said routers to a server;"), would require changing a principal of operation of Cloonan et al. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified [i.e., Cloonan et al.], then the teachings of the references are not sufficient to render the claims *prima facie* obvious." MPEP §2143.01 VI. Therefore, the present invention, as claimed in claims 2, 5 and 9 – 30 is not suggested by or *prima facie* obvious in view of Cloonan et al. in combination with any reference of record. Reconsideration and withdrawal of the rejection of claims 2, 5 and 9 – 30 under 35 U.S.C. §103(a) is respectfully requested.

The applicants thank the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance, both for the amendment to the claims and for the reasons set forth above, the applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 1 – 3 and 5 – 30 under 35 U.S.C. §§102(e) and 103(a) and allow the application to issue.

As the applicants have previously noted, MPEP §706 "Rejection of Claims," subsection III, "PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED" provides in pertinent part that

> If **the examiner** is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, he or she **may note** in the Office

action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration**.

(emphasis added.) The applicants continue to believe that the written description of the present application is quite different than and not suggest by any reference of record. Accordingly, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the local telephone No. listed below for a telephonic or personal interview to discuss any other changes.

Respectfully submitted,

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